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6 IN THE MATTER OF: :
7 Lee Casa Lebrato, Inc.: Case #16-CMP-000006
8 t/a Casa Lebrato :
9 1733 Columbia Road, NW :
10 License #98074 :
11 Retailer B :
12 ANC 1C :
13 Sold Go-Cups :
14 - - - - -X

15 Wednesday, October 5, 2016

17 Whereupon, the above-referenced matter
18 came on for hearing at the Alcoholic Beverage
19 Control Board, Reeves Center, 2000 14th Street,
20 N.W., Suite 400S, Washington, D.C. 20009.

1

2 BOARD MEMBERS PRESENT

3 NICK ALBERTI, BOARD MEMBER

4 JAMES SHORT, BOARD MEMBER

5 MIKE SILVERSTEIN, BOARD MEMBER

6 RUTHANNE MILLER, BOARD MEMBER

7

8 ALSO PRESENT:

9 CRISSY GEPHARDT

10 YOUNG CHU LEE

11 DORSHAE DEMBY

12

1 P R O C E E D I N G S

2

3 CHAIRPERSON ANDERSON: We are back on the
4 record. We're calling case #16-CMP-00006, Casa
5 Lebrato, license #98074. Will the parties please
6 approach and identify themselves for the record,
7 please?

8 MS. GEPHARDT: Chrissy Gephardt, here on
9 behalf of the office of the Attorney General.

10 CHAIRPERSON ANDERSON: Good morning, Ms.
11 Gephardt.

12 MS. GEPHARDT: Good morning.

13 MR. LEE: Young Chu Lee, Casa Lebrato owner.

14 CHAIRPERSON ANDERSON: Mr. Lee?

15 MR. LEE: Yes, sir.

16 CHAIRPERSON ANDERSON: Good morning, Mr. Lee.
17 Are there any preliminary matters in this case?

18 MS. GEPHARDT: No. The parties are ready to
19 go to the hearing.

20 CHAIRPERSON ANDERSON: I want to make sure,
21 are there any language barriers for you or do you
22 understand English?

1 MR. LEE: I understand, I'll do my best, sir.

2 CHAIRPERSON ANDERSON: No, sir, I don't want
3 it to be that you're trying your best. I need it
4 to be clear.

5 MR. LEE: yes.

6 CHAIRPERSON ANDERSON: I need to make sure
7 that you understand these proceedings in English.
8 If you do not, you need to state and we'll get an
9 interpreter for you. So, let me know whether or
10 not there are no language barriers for us to move
11 forward.

12 MR. LEE: I will try.

13 CHAIRPERSON ANDERSON: What, sir?

14 MR. LEE: [inaudible 2:40:52]

15 CHAIRPERSON ANDERSON: Okay, I want the
16 record to reflect that I did offer -- I did ask
17 if there was a language issue and the licensee
18 has stated that he is comfortable in the English
19 language to move forward in these proceedings.
20 Does the government wish to make an opening
21 statement?

22 MS. GEPHARDT: Just briefly. This case is

1 about to-go cups. On January 7, 2016, an ABRA
2 investigator entered in an undercover capacity at
3 approximately 7:00 p.m. [inaudible 2:41:30] and
4 proceeded to purchase a Mad Dog as well as two
5 go-cups. The investigator was provided with the
6 go-cups as well as the purchase of the alcohol
7 and proceeded to leave the store and we are going
8 to present our case and we will prove that.

9 CHAIRPERSON ANDERSON: Do you wish to make an
10 opening statement, sir? Or you can wait until
11 you present your case and then you can make a
12 statement, so you tell me what you want to do at
13 this time, sir.

14 MR. LEE: I want to wait for the
15 investigation, you can go to the --

16 CHAIRPERSON ANDERSON: Okay, so after the
17 government presents its case, then what I will
18 do, I will swear you in and then you can give
19 your version of the facts, and once the
20 government -- my assumption is that the
21 government is going to call its witness of the
22 investigator, the government is going to ask the

1 investigator some questions. While the
2 investigator is there you also can ask him
3 questions based on the report that he wrote and
4 based on the questions that the government asks.
5 The board will also ask the investigator some
6 questions. Then you will have an opportunity to
7 ask the investigator questions based on what the
8 board has asked and Ms. Gephardt will do the same
9 thing. If at any point during the proceedings,
10 if you don't understand anything or if you have a
11 question you can let me know and I will stop and
12 make sure that you understand what's going on,
13 okay?

14 MR. LEE: Yes.

15 CHAIRPERSON ANDERSON: All right, does the
16 government wish to call its first witness?

17 MS. GEPHARDT: Yes, the government calls ABRA
18 investigator, Dorshae Demby.

19 CHAIRPERSON ANDERSON: Mr. Demby, can you
20 raise your right hand? Do you swear or affirm to
21 tell the truth and nothing but the truth?

22 MR. DEMBY: I do.

1 CHAIRPERSON ANDERSON: All right, thank you.
2 Have a seat, please. Yes, Ms. Gephardt, your
3 witness.

4 MS. GEPHARDT: Investigator Demby, good
5 morning.

6 MR. DEMBY: Good morning.

7 MS. GEPHARDT: Will you please state your
8 name and spell it for the record.

9 MR. DEMBY: Dorshae Demby. First name,
10 Dorshae, D-O-R-S-H-A-E. Last name, Demby, D-E-M
11 as in Mary, B as in boy, Y.

12 MS. GEPHARDT: Mr. Demby, where do you work?

13 MR. DEMBY: With the Alcoholic Beverage
14 Regulation Administration.

15 MS. GEPHARDT: What is your title?

16 MR. DEMBY: Investigator.

17 MS. GEPHARDT: How long have you worked for
18 ABRA?

19 MR. DEMBY: A little over two years now.

20 MS. GEPHARDT: Okay and what are your primary
21 responsibilities as an investigator for ABRA?

22 MR. DEMBY: To conduct regulatory inspections

1 and investigations in licensed ABC establishments
2 throughout the District of Columbia.

3 MS. GEPHARDT: Okay. Are you familiar with
4 an ABC establishment by the name of Casa Lebrato?

5 MR. DEMBY: Yes, ma'am, I am.

6 MS. GEPHARDT: Did you have the occasion to
7 visit Casa Lebrato on Thursday, January 7, 2016,
8 at approximately 6:50 p.m.

9 MR. DEMBY: Yes, ma'am I did.

10 MS. GEPHARDT: What was the purpose of your
11 visit?

12 MR. DEMBY: We were conducting undercover
13 operations to ensure compliance with ABRA
14 regulations. In this particular situation I
15 visited this establishment to see if I could
16 purchase a go-cup.

17 MS. GEPHARDT: Okay. In your undercover
18 capacity, was this done based on reports that
19 you would have gotten that this establishment was
20 selling go-cups?

21 MR. DEMBY: No, ma'am. It was random. When
22 we do undercover operations, particularly that

1 type of assignment, we go to a particular
2 neighborhood, it just so happened to be that
3 neighborhood that day, visit the ABC licensed
4 establishments. If they don't make the sale we
5 leave and move on to the next place. If they
6 make the sale then we end up here.

7 MS. GEPHARDT: So, what happened?

8 MR. DEMBY: I entered the establishment in an
9 undercover capacity. I went to the rear of the
10 establishment, removed the Mad Dog 20/20, took it
11 to the register. There was a female Asian store
12 clerk. I then requested two cups for the
13 consumption of my alcohol. She then reached down
14 into a brown box, took out two white Styrofoam
15 cups, placed them on the counter along with my
16 alcoholic beverage that I had placed on the
17 counter, rang me up for the purchase, I paid for
18 the contents and exited the establishment.

19 MS. GEPHARDT: Did you pay for the Styrofoam
20 cups?

21 MR. DEMBY: No, there was no extra charge for
22 the cups.

1 MS. GEPHARDT: Okay. I'd like to show the
2 witness what, I don't know if it's board exhibit,
3 or joint exhibit #1. Can you say what that is?

4 MR. DEMBY: Sure. It's a bottle of Mad Dog
5 20/20 peaches and cream, and it's labeled with
6 Casa Lebrato, with their license number. It says
7 what happened which is the go-cup, obviously, the
8 investigator, which is me, investigator Demby,
9 and the date, January 7, 2016.

10 MS. GEPHARDT: Is that how you know this is
11 the bottle, the actual bottle you bought that
12 day?

13 MR. DEMBY: Yes, ma'am. Once I returned to
14 the office that bottle was placed into evidence.
15 An evidence transmitter was filled out, pictures
16 were taken to go along with the report and that
17 label just allows us to access it at a later date
18 such as today, so that we know we have the
19 accurate piece of information.

20 MS. GEPHARDT: Okay. This is the exhibit,
21 that's what you bought?

22 MR. DEMBY: Yes.

1 MS. GEPHARDT: Okay. I'm going to ask -- I
2 don't know if I need to do this -- but ask that
3 this be put into evidence for exhibit 1. I don't
4 know, do you guys already have it? I don't know.
5 I don't know how -- what [inaudible 2:46:48].

6 CHAIRPERSON ANDERSON: Well, you asked for it
7 to be moved into evidence, so moved.

8 MS. GEPHARDT: Okay.

9 CHAIRPERSON ANDERSON: It's part of the
10 evidence for this case.

11 MS. GEPHARDT: Okay. The government would
12 now like to show the witness what I've marked as
13 government exhibit 2. Mr. Demby, can you explain
14 to the board what that is?

15 MR. DEMBY: It's two white Styrofoam cups
16 wrapped in plastic, again, labeled with the
17 establishment's name. It actually has a sticker
18 on it that says 50 cents plus tax. There was no
19 additional charge to my purchase. It has my
20 name, investigator Demby, along with the go-cup,
21 again with the date January 7, 2016.

22 MS. GEPHARDT: Okay. How do you know that

1 these are the go-cups that you received on that
2 date?

3 MR. DEMBY: When I came back -- again, when
4 we collected the evidence it immediately came
5 back to the office, was labeled, placed into
6 evidence and those are the cups that I received.
7 Also, there were pictures taken to go along with
8 the report.

9 MS. GEPHARDT: Okay. I just want to show the
10 witness the exhibit.

11 MR. LEE: Yes, we have seen it, yeah.

12 MS. GEPHARDT: Okay, the government asks that
13 exhibit 2 be entered into evidence.

14 CHAIRPERSON ANDERSON: Mr. Lee, do you have
15 any -- and I did not ask this before, so I
16 apologize. Do you have any issues with making
17 these two documents part of the evidence?

18 MR. LEE: First of all, I know we cannot sell
19 the Styrofoam cups for the alcohol, but our
20 convenience --

21 CHAIRPERSON ANDERSON: You don't need to
22 explain. What I'm saying is that you can do that

1 later on but the government is just saying that
2 these are the two pieces of evidence that they
3 purchased these -- the alcohol and the cups from
4 your establishment. They want to move it into
5 evidence. I'm asking you whether or not you
6 agree with that or disagree with that, to say
7 that these should not be part of the evidence.

8 MR. LEE: No, we do not agree with the
9 evidence, sir.

10 CHAIRPERSON ANDERSON: And why -- why do you
11 -- why are you saying that these documents should
12 not be -- I'm sorry, these two exhibits -- should
13 not be a part of the evidence?

14 MR. LEE: We cannot serve the Styrofoam cup,
15 I know this, so we make. Some people want to go,
16 to carry --

17 CHAIRPERSON ANDERSON: Let me ask the
18 question, are you stating that you did not sell
19 that MD 20/20 to Mr. Demby?

20 MR. LEE: Well, he state an Asian female. My
21 wife was -- didn't serve it to him.

22 CHAIRPERSON ANDERSON: But are you saying

1 that your establishment did not sell that bottle
2 to Mr. Demby?

3 MR. LEE: I don't understand what the
4 question is.

5 CHAIRPERSON ANDERSON: Okay. Are you saying
6 -- do you sell MD 20/20 in your establishment?

7 MR. LEE: Yes.

8 CHAIRPERSON ANDERSON: And do you sell, I
9 think does it come in different flavors? Did you
10 sell that specific -- does that come in a flavor?

11 MS. GEPHARDT: Peaches and Cream.

12 CHAIRPERSON ANDERSON: Peaches and -- so do
13 you sell MD 20/20 Peaches and Cream in your
14 establishment, sir?

15 MR. LEE: Yes.

16 CHAIRPERSON ANDERSON: And do you have
17 Styrofoam cups in your establishment like that,
18 sir?

19 MR. LEE: Yes, people we sell, [inaudible
20 2:50:06].

21 CHAIRPERSON ANDERSON: Okay, I'm going to
22 overrule your objection. The Peaches and Cream

1 20/20 and the two Styrofoam cups are part of the
2 record. In presenting your case, sir, then you
3 can -- you'll have an opportunity to question Mr.
4 Demby when she's done, about those two items
5 specifically, okay? Whatever questions you have,
6 you can question him about the two items and ask
7 him whatever questions you want to ask, okay?
8 So, they're part of the record.

9 MS. GEPHARDT: Okay, Investigator Demby, did
10 you have any further conversation with the clerk
11 about the go-cups?

12 MR. DEMBY: No, ma'am.

13 MS. GEPHARDT: Okay. And did you pay for
14 these items?

15 MR. DEMBY: Yes, ma'am.

16 MS. GEPHARDT: And did you pay for the
17 alcohol?

18 MR. DEMBY: Yes, ma'am.

19 MS. GEPHARDT: And did you pay for the go-
20 cups?

21 MR. DEMBY: Not separately, no.

22 MS. GEPHARDT: And did you get a receipt at

1 the time?

2 MR. DEMBY: No ma'am.

3 MS. GEPHARDT: Okay. And, after you made the
4 transaction with the clerk did you do anything
5 else before you exited the store?

6 MR. DEMBY: No, ma'am.

7 MS. GEPHARDT: Okay, all right. The
8 government rests with the testimony of
9 investigator Demby.

10 CHAIRPERSON ANDERSON: Mr. Lee, do you have
11 any questions you want to ask Mr. Demby based on
12 his testimony?

13 MR. LEE: Yes, I want to ask. If you decide
14 this was, okay we sell this one, why don't you,
15 it's a violation, why don't you give right away a
16 ticket and then usually they are going to be a
17 violation, give to the form and the sign, sign
18 it, but the other inspector coming in one month
19 later and he coming in with a second violation,
20 so I didn't know -- I didn't know about the first
21 violation and the second violation. He give the
22 second violation, this one I cannot have the one

1 and then I send it to the -- And then one month
2 later, so you're going to be two months later,
3 come in, 'oh, you got just the one violation for
4 this one' and give the one violation on the
5 ticket, so already sent it to -- so coming to be
6 here, but I don't understand without any ticket
7 and fine, ticket, so how come that the second
8 violation and then without the fine ticket how
9 can we get the violation --first violation
10 ticket. That's why I'm coming to fight this
11 here. Fight this like this. And then my store
12 is a convenience store, some --

13 CHAIRPERSON ANDERSON: Hold on, I think
14 you're asking -- I think the question you're
15 asking, tell me if you are -- are you asking him
16 why is it that when they bought the alcohol in
17 your establishment why didn't they tell you at
18 the same time that you made a --

19 MR. LEE: Yes.

20 CHAIRPERSON ANDERSON: Is that the question
21 you're asking?

22 MR. LEE: Yes. Right away they usually give

1 a violation ticket. They give you the ticket.

2 CHAIRPERSON ANDERSON: Do you understand the
3 question, Mr. Demby?

4 MR. DEMBY: As you stated it, sir, I do.

5 CHAIRPERSON ANDERSON: What?

6 MR. DEMBY: As you stated it, I do, sir.

7 CHAIRPERSON ANDERSON: So, can you answer --
8 that's the question he's trying to ask you. Why
9 is it that if the violation occurred -- and let
10 me clari -- because I think I get what he's
11 asking -- when is it that did you inform -- when
12 did the agency inform them of the violation and
13 why was there -- and when did they and how long
14 did it take to inform them of the violation.

15 MR. DEMBY: Why wasn't he notified
16 immediately?

17 CHAIRPERSON ANDERSON: Yes.

18 MR. DEMBY: Why wasn't he notified
19 immediately of the violation?

20 CHAIRPERSON ANDERSON: I think that's what
21 he's asking.

22 MR. DEMBY: Is that the question, sir?

1 MR. LEE: Yes.

2 MR. DEMBY: Okay, so to answer that, when we
3 do undercover operations there isn't an instant
4 enforcement history that we make an immediate
5 notification of an undercover sale. The only
6 time we make immediate notifications when we're
7 doing undercover operations is during our sale to
8 minor operations to which we have you sign a
9 sale-to-minor notification form, but that's
10 getting off topic. As far as this goes, we have
11 30 days from the date of the violation to notify
12 you of that violation. It will never be
13 immediate, because if we do that there's no point
14 in us going in undercover.

15 MR. LEE: But why -- I mean to the second
16 violation. I don't understand the second
17 violation that it's going to be something --

18 MR. DEMBY: I can't speak to this first or
19 second or whatever number violation that you're
20 speaking of, the only violation that I issued you
21 was a go-cup sale on that date. So, if you had a
22 subsequent violation, when they came to notify

1 you, i.e., for example, a no-ABC-manager, that
2 would be another violation for that day, but the
3 only violation that I violated you on was the go-
4 cup sale that took place on January 7th of 2016.
5 I can't speak to any other matter that any other
6 investigator had with you or your establishment.

7 MR. LEE: That's why I don't get it --
8 without any warning and something like this, you
9 coming to and then you have to buy this and this
10 kind of point, so that's why I cannot accept that
11 one. You know, usually a violation ticket going
12 to usually explain something like that and then
13 give to the violation, and or we sign to that
14 one. That is going to be normally [inaudible
15 2:55:27] but you have coming in you've got first
16 violation, second violation, that's why I come to
17 be here, that's why. It's not fair, sir.

18 CHAIRPERSON ANDERSON: Do you have any other
19 questions that you have of Mr. --

20 MR. LEE: I never met him, so my wife is she
21 going to do like that, and then maybe my wife,
22 she, I don't know about this station but if he

1 ask for sale of a single cup maybe my wife say he
2 cannot sell the single cup, if you want to do
3 something like that we going to make -- I know
4 that we cannot sell the single cups, we know
5 that, so we can make the pack like that, you sell
6 them. Because some customer wanted something of
7 my convenience store to share juice or water,
8 something like that, they need the cups, so if
9 you want to do that we can sell in the packing,
10 cup like that, so maybe my wife --

11 MS. GEPHARDT: I'm sorry, he's testifying
12 which, you know, this is the time to ask him --
13 he's supposed to be asking him questions.

14 CHAIRPERSON ANDERSON: I -- I -- I know Ms.
15 Gephardt and I'm trying to go through and that's
16 one of the reasons that I'd asked Mr. Demby the
17 question because I figured the question that he
18 was asking, although it was not properly asked,
19 so, and I'm mindful that he's not an attorney and
20 so I do give him some deference, but do you have
21 any other specific questions that you want to ask
22 him? I'm going to have you -- after he's left

1 you're going to have an opportunity to explain
2 yourself but do you have any other specific
3 questions that you want to ask him?

4 MR. LEE: No, sir.

5 CHAIRPERSON ANDERSON: No? Fine. Are there
6 any questions that any board members want to ask?
7 Yes, Ms. Miller.

8 MS. MILLER: Good morning, Mr. Demby.

9 MR. DEMBY: Good morning, ma'am.

10 MS. MILLER: I just want to ask you about
11 your labeling.

12 MR. DEMBY: Yes, ma'am.

13 MS. MILLER: Okay. Could you reiterate what
14 you put on the label?

15 MR. DEMBY: What information is on the label?

16 MS. MILLER: Mm hmm.

17 MR. DEMBY: I have to think --

18 CHAIRPERSON ANDERSON: Excuse me, Ms.
19 Gephardt. Does he have a copy of the -- Mr. Lee
20 have a copy of the report?

21 MS. GEPHARDT: I mean --

22 MR. LEE: I'm not [inaudible 2:58:04].

1 CHAIRPERSON ANDERSON: Can we give Mr. Lee a
2 copy of the investigative report? All right, go
3 ahead, Mr. Alberti.

4 MR. ALBERTI: Mr. Lee, there are pictures at
5 the back, of the bottle and the cups.

6 CHAIRPERSON ANDERSON: On your report.

7 MR. ALBERTI: There are pictures of the
8 bottles and the cups. I wanted to let you know
9 that they were there.

10 MS. MILLER: Thank you. That somewhat
11 answers that question, too, I think. There are
12 pictures at the back of the exhibits show what
13 information you put on the evidence?

14 MR. DEMBY: Yes, ma'am.

15 MS. MILLER: So, is that pretty standard?
16 Why don't you just say it again for the record,
17 though.

18 MR. DEMBY: Again, just for clarity, you want
19 me to go over the information I'm talking about?

20 MS. MILLER: Mm hmm.

21 MR. DEMBY: Okay. The trade number, the ABC
22 license number, the type of transaction that took

1 place. That's on the bottom left. You see it
2 says "go cup."

3 MS. MILLER: Okay.

4 MR. DEMBY: My name, so they know whose
5 evidence this is and somewhere on the label, mine
6 is in the upper lefhand corner, the date that
7 everything took place.

8 MS. MILLER: Okay, now when do you do this
9 label?

10 MR. DEMBY: When I'm preparing the transmit
11 into evidence.

12 MS. MILLER: So, not until you get back to
13 the office?

14 MR. DEMBY: That's correct.

15 MS. MILLER: Okay, so if you -- how many
16 establishments do you see in a particular day?

17 MR. DEMBY: When I'm doing go-cups or when
18 I'm doing --

19 MS. MILLER: When you do your random
20 inspections.

21 MR. DEMBY: Between eight to ten, average.

22 MS. MILLER: Okay, so how do you keep track

1 of the different go-cups or whatever that you
2 might pick up?

3 MR. DEMBY: Run sheet.

4 MS. MILLER: You have a spreadsheet?

5 MR. DEMBY: No, we complete a run sheet at
6 the end of our shift. We complete a run sheet of
7 all the stops that we've made, so if a sale was
8 made, on the run sheet it has the date, the time,
9 the address and the disposition and if any
10 violations were found. So, in the disposition if
11 there was a violation found you'll see in that
12 disposition go-cup, the date, you know and the
13 time is already on another part of that
14 individual run sheet.

15 MS. MILLER: You put the time on?

16 MR. DEMBY: Yes, ma'am.

17 MS. MILLER: On the label?

18 MR. DEMBY: No, no, no. On the run sheet.

19 MS. MILLER: On the run sheet.

20 MR. DEMBY: Yes, ma'am.

21 MS. MILLER: Okay, so there's more
22 information on the run sheet than on here.

1 MR. DEMBY: Yes, ma'am.

2 MS. MILLER: Okay. So, if you went to two
3 places that had similar go-cups or something that
4 you had in evidence would they be differentiated
5 on the run sheet?

6 MR. DEMBY: Yes.

7 MS. MILLER: Okay.

8 MR. DEMBY: And also, I mean, if we have more
9 than just one sale and they sell a similar item -
10 - let's say I bought the same item, Mad Dog
11 20/20, somewhere else that day --

12 MS. MILLER: Right.

13 MR. DEMBY: -- but on this particular day
14 this was the only sale. But just for the sake of
15 argument --

16 MS. MILLER: Right.

17 MR. DEMBY: -- let's say that I did -- I
18 would note on my run sheet that one is in the
19 front seat, one is in the back seat -- I know
20 what belongs where so that we don't get it
21 confused.

22 MS. MILLER: Okay. That was my question.

1 Are these the only photos that you take?

2 MR. DEMBY: Yes, ma'am.

3 MS. MILLER: Okay. Thank you.

4 MR. DEMBY: Okay.

5 CHAIRPERSON ANDERSON: Yes, Mr. Alberti.

6 MR. ALBERTI: I'm going to make this real
7 quick. Investigator Demby, first of all thank
8 you for your report.

9 MR. DEMBY: Yes, sir.

10 MR. ALBERTI: Okay, in the cups -- they're in
11 a plastic bag. Is that how you purchased them in
12 that plastic bag?

13 MR. DEMBY: Yes, sir.

14 MR. ALBERTI: How's that plastic bag sealed?

15 MR. DEMBY: Like a -- I guess the best way I
16 could -- maybe like a vacuum seal. They took
17 some hot glue --

18 MR. ALBERTI: Okay.

19 MR. DEMBY: -- put it on the seal. It's not
20 -- it didn't come from the manufacturer that way,
21 which gets us to the nexus of the problem.

22 MR. ALBERTI: Okay, so it's your opinion that

1 there's no evidence that it was packaged by the
2 manufacturer.

3 MR. DEMBY: That's correct.

4 MR. ALBERTI: Okay. It has a little grocery
5 50 cent tag on it, right?

6 MR. DEMBY: Yes, sir.

7 MR. ALBERTI: Is that tag similar to the one
8 that's on the bottle? There's a little grocery
9 tag sticking up above your labels.

10 MR. DEMBY: I can remove this if you like.

11 MR. ALBERTI: No.

12 MR. DEMBY: But it is the same exact tag. It
13 says grocery.

14 MR. ALBERTI: It's a similar tag?

15 MR. DEMBY: Yes, sir.

16 MR. ALBERTI: Okay. I have no further
17 questions. Thank you.

18 CHAIRPERSON ANDERSON: Are there any other
19 questions by any other board members? Mr. Lee?

20 MR. LEE: Yes.

21 CHAIRPERSON ANDERSON: Do you have any
22 questions to Mr. Demby based on the questions

1 that we just asked him?

2 MR. LEE: No, sir.

3 CHAIRPERSON ANDERSON: No?

4 MR. LEE: Just a little --

5 CHAIRPERSON ANDERSON: Remember, you're
6 asking him based on the questions we just asked.

7 MR. LEE: I don't know, did the ABC policy
8 going to be 30 days and then give the fine
9 because one of your -- but I don't know about the
10 kind of policy, you know, ABC policy, so usually
11 you know, I ask my friend, and usually they give
12 it the fine right away, but you know after one
13 month or I don't remember that one and then
14 suddenly come in to my store and then you got the
15 violation and then, that's not -- we don't
16 remember that one, it's not fair. That's why,
17 just to come -- I just -- if you have to buy this
18 can you wait until the next time in the daily --
19 MR. DEMBY: No, sir. No, sir. There would
20 never be an instance that a situation like this
21 occurs and you get your violation notice
22 immediately. That won't happen.

1 MR. LEE: Okay, so, what can I do?

2 CHAIRPERSON ANDERSON: Do you have any
3 questions to Mr. Demby based on the questions
4 that the board asked, Ms. Gephardt?

5 MS. GEPHARDT: No, I don't.

6 CHAIRPERSON ANDERSON: All right, thank you.
7 Does the government have any other witnesses?

8 MS. GEPHARDT: No, the government does not
9 have any other witnesses.

10 CHAIRPERSON ANDERSON: Does the government
11 rest?

12 MS. GEPHARDT: Yes, the government rests.

13 CHAIRPERSON ANDERSON: Okay, thank you. Mr.
14 Lee, can you raise your right hand please? Do
15 you swear or affirm to tell the truth and nothing
16 but the truth?

17 MR. LEE: Yes.

18 CHAIRPERSON ANDERSON: Mr. Demby, you can
19 step down.

20 MR. DEMBY: Thank you, sir.

21 CHAIRPERSON ANDERSON: Now, this is your
22 opportunity to present your case, so can you tell

1 us how do you plan to -- the charge is that you
2 sold the bottle and the investigator asked for a
3 cup and your wife or the person at the store gave
4 him the go-cup, this cup. How to you plan to
5 address this issue with the board, to say whether
6 or not you are innocent or guilty?

7 MR. LEE: I don't understand what you are
8 saying.

9 CHAIRPERSON ANDERSON: This is your time to
10 explain what's your defense. The government
11 basically stated that what was testified by Mr.
12 Demby, he came to your store, he bought the
13 bottle, he asked for a go cup and that those two
14 cups were given to him, and it appears that at
15 some point later an investigator came back to
16 your store and said that this happened a month
17 ago. How do you plan to address these concerns,
18 sir?

19 MR. LEE: I mean, we cannot, okay so -- we, I
20 didn't know about that. I know that just person,
21 we cannot sell the single cups, so I didn't know
22 about that, you know, so without go cup make the

1 pack and thing like that, so we didn't sell to
2 there was no more, you know. I don't know the
3 government would just find out if any -- here.

4 CHAIRPERSON ANDERSON: Are you stating that
5 your wife did sell, or that the person did sell
6 the bottle to the investigator, is that correct?
7 And is it also correct that those two cups were
8 sold also? So, are you stating that your
9 interpretation of the law, you can't give one cup
10 but you can give, you can do two cups, is that
11 what you're saying?

12 MR. LEE: One cup, a single cup, you cannot
13 sell to people, you know, with some alcohol and
14 the people. But, you know, it's a convenience
15 store. If people want to do what the packing
16 cup, you know, I mean, two or three cup like
17 that, you know, I thought we could sell
18 [inaudible 3:06:57] or something. The inspector
19 come into my store and ask to, you know, this
20 situation, but he say you cannot sell without the
21 factory cup, so we didn't sell to any for the
22 making of the cup, so that's it.

1 CHAIRPERSON ANDERSON: Are you aware, sir,
2 that if someone comes to your establishment and
3 buys alcohol, the bottle, that if they buy, if
4 they just come and buy that bottle, just all the
5 ones are bottles, and if they ask you for a cup,
6 whether or not it's one, two, three -- do you
7 know that you can't give them a cup if they just
8 buy a bottle of alcohol, a bottle of liquor?

9 MR. LEE: Huh?

10 CHAIRPERSON ANDERSON: You have to say yes or
11 no.

12 MR. LEE: No, sir.

13 CHAIRPERSON ANDERSON: So, you didn't know
14 that. So you just thought that as long as you're
15 not giving them one cup you're fine, but if you
16 give them two cups or three cups it doesn't
17 matter?

18 MR. LEE: I think it's packing cup is going
19 to be, is going to be okay, that one or two. But
20 he say when the factory make the packing cup is
21 going to be okay, but that this is.

22 CHAIRPERSON ANDERSON: All right, okay. Yes,

1 Mr. Alberti.

2 MR. ALBERTI: Mr. Lee, what I heard you say
3 before is that you were concerned that the
4 citation, the ticket, was not given to you
5 immediately, is that correct?

6 MR. LEE: Yes, sir.

7 MR. ALBERTI: It was given to you several
8 weeks later?

9 MR. LEE: Almost one month later, come into -
10 - some inspector come in to tell me you got two
11 violations, so I just wonder --

12 MR. ALBERTI: Two violations?

13 MR. LEE: Yeah, the violation. So, I even
14 one violation I didn't know that and by the
15 second violation so I don't know about this
16 saying selling the to-go cup.

17 MR. ALBERTI: Mr. Lee, when was the second
18 violation?

19 MR. LEE: That's why I don't know, that's why
20 you get the, I got a form.

21 MR. ALBERTI: Sir, let me sort of explain, if
22 I understand, so he came in on January 7th.

1 MR. LEE: Yeah the 7th.

2 MR. ALBERTI: And he noted, he found a
3 violation on that date?

4 MR. LEE: Yes, right.

5 MR. ALBERTI: Okay.

6 MR. LEE: But he didn't give the any notice.

7 MR. ALBERTI: Wait. So then thirty days
8 later he came back and gave you a ticket.

9 MR. LEE: Not this investigator, the other --

10 MR. ALBERTI: Another somebody else gave you
11 a ticket for the January 7th incident.

12 MR. LEE: Right, and he say second violation,
13 so I don't know about the second violation, but
14 he just give the second violation ticket.

15 MR. ALBERTI: So, you have tickets for two
16 violations?

17 MR. LEE: Yes, sir, that's why --

18 MR. ALBERTI: Ms. Gephardt, can you take a
19 look at that please and then we can take that
20 into evidence if we need to? I think there's --
21 I'm doing this because I think there's some
22 misunderstanding. Oh, I think I overheard

1 something, all right.

2 MS. GEPHARDT: A secondary tier violation,
3 not the second go-cup violation. So, it looks
4 like --

5 MR. ALBERTI: But that doesn't seem to be
6 correct.

7 MS. GEPHARDT: -- penalized for go cups twice
8 but it's not.

9 MR. ALBERTI: So, Mr. Lee, I think you didn't
10 understand what they wrote on the ticket. What
11 they were saying was that it was -- they were
12 saying that this was a second violation -- but
13 wait, let me finish, let me finish.

14 MR. LEE: Yes.

15 MR. ALBERTI: That there had been one in the
16 past. I would just tell you that you were given
17 a warning for a different violation in the past,
18 back in 2015 for signage or something? Our
19 records show.

20 MR. LEE: No sir, never ever.

21 MR. ALBERTI: Well, that's what our records
22 show, that you were given a warning for some

1 other violation. That will not -- Mr. Lee --
2 that does not, that has no bearing, that does not
3 affect this violation. So, you -- so we are
4 treating this as a first violation.

5 MR. LEE: Yes.

6 MR. ALBERTI: Is that okay with you?

7 MR. LEE: Yes.

8 MR. ALBERTI: Alright, so I just want you to
9 understand we are treating this as a first
10 violation for how we come up with the fine, and I
11 just wanted to make sure you understood that. Do
12 you understand?

13 MS. GEPHARDT: Wait, oh here --

14 MR. ALBERTI: Ms. Gephardt, do you want to
15 speak?

16 MS. GEPHARDT: So, okay. Board's indulgence.

17 MR. ALBERTI: It's not that I don't want to
18 hear from you, Mr. Demby, but you are a witness
19 and I think it's more appropriate if Ms. Gephardt
20 provide any information that's necessary.

21 CHAIRPERSON ANDERSON: Hold on one minute,
22 Ms. Gephardt, hold on one minute, please, okay?

1 MR. ALBERTI: So, Ms. Gephardt, our records
2 show that in June of 2015 there was a warning for
3 a signage citation.

4 MS. GEPHARDT: Right, I see that.

5 MR. ALBERTI: For signage, correct? Then we
6 have on our records a January 6, 2016, violation
7 for, that we're addressing today.

8 MS. GEPHARDT: Right.

9 MR. ALBERTI: Do you see anything else?

10 MS. GEPHARDT: I need to consult with my
11 witness.

12 MR. ALBERTI: Okay, please go ahead.

13 MS. GEPHARDT: I didn't have a chance to --
14 we --

15 MR. ALBERTI: So, actually, Ms. Gephardt I've
16 overheard, and I'm going to -- here's what I
17 understand. Is that this license was transferred
18 to this new owner --

19 MS. GEPHARDT: Right.

20 MR. ALBERTI: -- sometime in 2015 maybe?

21 MS. GEPHARDT: Right.

22 MR. ALBERTI: Right. So, all past violations

1 for this license number before this, before Mr.
2 Lee owned the license, are not relevant. They
3 disappear.

4 MS. GEPHARDT: Right.

5 MR. ALBERTI: We don't look at them.

6 MS. GEPHARDT: Right.

7 MR. ALBERTI: So, let's just concern
8 ourselves with what's happened while Mr. Lee has
9 had the license.

10 MS. GEPHARDT: Right.

11 MR. ALBERTI: While Mr. Lee has had the
12 license, there was a warning in 2015 for signage,
13 okay? And then we had this violation that we're
14 addressing today for go cups and we are treating
15 this, for the fining purposes, we are treating
16 this as a first violation, first secondary
17 violation. Does everybody -- Mr. Lee do you
18 understand that?

19 MR. LEE: Yes, sir, yes.

20 MR. ALBERTI: Ms. Gephardt, do you understand
21 that?

22 MS. GEPHARDT: Yes, we understand.

1 MR. ALBERTI: Okay, I just wanted to make
2 sure everybody's on the same page

3 MS. GEPHARDT: Gotcha.

4 MR. ALBERTI: All right.

5 MS. GEPHARDT: So, this letter, I can't
6 testify but this letter was voided --

7 MR. ALBERTI: Yeah, yeah. Okay.

8 MS. GEPHARDT: Yeah, okay.

9 MR. ALBERTI: So, you understand that letter
10 -- we're not dealing with that, that's no good
11 anymore.

12 MR. LEE: Yeah.

13 MR. ALBERTI: All right, great. Thank you.

14 CHAIRPERSON ANDERSON: All right. Do we have
15 any other, sorry, Mr. Lee was -- do you have
16 anything else you want to say, Mr. Lee?

17 MR. ALBERTI: May I ask Mr. Lee one question?

18 MS. GEPHARDT: One question.

19 MR. ALBERTI: Mr. Lee, I think you said this
20 before, so I'm going to ask, if you had been --
21 if you had been given the correct information to
22 begin with, that this was your first violation

1 and that the fine was \$250, would you have paid
2 that?

3 MR. LEE: Yes, I would sir.

4 MR. ALBERTI: Okay, thank you. That's all I
5 need to know.

6 CHAIRPERSON ANDERSON: Go ahead, Ms. Miller,
7 I apologize, go ahead, I apologize.

8 MS. MILLER: I just want to clarify, or ask
9 you to clarify if you have a defense to the
10 violation. Whether or not it was, what your
11 understanding of what a go-cup is or was at that
12 time?

13 MR. LEE: Yes. Yes.

14 MS. MILLER: What is that? Can you say it
15 for the record? Did you think you were violating
16 the law when your clerk, or your wife, whoever
17 was selling -- I mean, whoever was providing the
18 cups -- did you think that was a violation?

19 MR. LEE: I understand, yeah I understand it
20 clearly.

21 MS. MILLER: You thought it was a violation?

22 MR. LEE: Yeah. From what I hear.

1 MS. MILLER: Okay, I wasn't sure whether you
2 had any confusion about one cup versus two cups
3 or how it was packaged, or.

4 MR. LEE: Yes, I understand, yes.

5 MS. MILLER: You understand?

6 MR. LEE: Yes, ma'am.

7 MS. MILLER: And you understand -- when did
8 you understand that it was a violation?

9 MR. LEE: I thought when inspector come in
10 and then I ask him we cannot sell the single
11 cup, you know, the individual the cup, but I ask
12 the inspector is that why I get a violation for
13 the go cup, you know, like that, she change it
14 like that and he have to talk to me clearly you
15 cannot sell the packing, we make the packing cup
16 can I sell? Only you can sell the factory cup.
17 So, after that we removed all of them and then we
18 just get single, I mean, the factory, you know
19 the bottle and the factory cups we sell like that
20 right now.

21 MS. MILLER: Okay so was that, that inspector
22 came in connection with the violation that we're

1 talking about today?

2 MR. LEE: Yeah. After one month, he come, he
3 say [inaudible 3:18:34] and then I asked him and
4 he told the situation that's why I know that
5 clearly. Before, you know, we didn't know, I
6 just got the store the last two years, so we
7 didn't know that just that over that time you
8 cannot sell the single cup, that's it you know,
9 so I thought we can, like I said the packing
10 something like that, because my store is
11 convenience, if some customer wanted a cup, you
12 know, but so, so, we make the double one and then
13 it's going to be okay, but like after that you
14 know go-cup violation and then I know clearly I
15 cannot sell to the, you know packing, so we can
16 sell only factory cup, that's it. Yeah, we
17 cannot sell -- now we don't sell to them anymore
18 for the packing or any except the factory cups,
19 that's it.

20 MS. MILLER: Okay, and have you ever taking
21 any training at ABRA? Here at ABRA with respect
22 to understanding the regulations and the laws

1 governing the sale of alcohol?

2 MR. LEE: No ma'am.

3 MS. MILLER: Okay, do you know that they have
4 their trainings?

5 MR. LEE: Sometime they send it to the
6 letter, you know one time sent the letter but I
7 don't have time to do that one so that's why I
8 could not go to that. If I got a chance to do
9 it, I can go to that, yeah.

10 MS. MILLER: Okay, okay. I would highly
11 recommend it.

12 MR. LEE: Thank you.

13 MS. MILLER: Okay, all right, thank you.

14 CHAIRPERSON ANDERSON: Are there any other
15 questions by any other board members? Do you
16 have any other representation to make, sir?

17 MR. LEE: No, sir.

18 CHAIRPERSON ANDERSON: All right, does the
19 government wish to make a closing statement?

20 MS. GEPHARDT: Actually I don't think I was
21 able to -- I don't think I asked --

22 CHAIRPERSON ANDERSON: I'm sorry. Ms.

1 Gephardt.

2 MS. GEPHARDT: I just have one quick
3 question.

4 CHAIRPERSON ANDERSON: Sure, go ahead.

5 MS. GEPHARDT: So, you say that what we're
6 alleging, this violation that we're alleging,
7 that it's true? That you did that, or your wife
8 did that?

9 MR. LEE: Yes, right, yeah.

10 MS. GEPHARDT: Okay, okay. That's all I
11 have.

12 CHAIRPERSON ANDERSON: All right. As Mr. Lee
13 has stated that he doesn't have anything else to
14 state, does the government wish to make a closing
15 statement?

16 MS. GEPHARDT: Yes, please. So, board
17 members, I think that there are some peripheral
18 issues here that are sort of getting in the way,
19 but the main point here is we're trying to prove
20 a violation. The government has proved the
21 violation and that was proved in a couple of
22 ways: Number one, Mr. Lee admitted to the

1 violation that they sold the go-cup on that
2 particular day, on January the 7th, 2016. In
3 addition to the admission, we also have testimony
4 from the investigator that this occurred. You
5 heard his testimony about what he did and the
6 labeling he did of the exhibits and how he
7 identified the exhibits in terms of keeping it on
8 a run sheet and keeping it separate in the car.
9 But, really, what this comes down to is we have
10 an admission so that should be pretty solid.
11 This whole thing about the violation and whether
12 he was given the wrong violation because the
13 license was transferred, these are all issues
14 that could be considered by the board in
15 fashioning the penalty but that doesn't change
16 the fact that there's been a violation. And
17 that's all I have.

18 CHAIRPERSON ANDERSON: So, what is the fine
19 range that the government requests?

20 MS. GEPHARDT: Well, the fine range -- what
21 is it, \$250 to \$500? The government would ask
22 for a \$350 fine.

1 CHAIRPERSON ANDERSON: All right. Anything
2 further you need to say, sir? Thank you. Any
3 further thing you need to say, sir?

4 MR. LEE: No, sir.

5 CHAIRPERSON ANDERSON: As chairperson of the
6 alcoholic beverage control board for the District
7 of Columbia in accordance with Section 405 of the
8 Open Meetings Amendment Act of 2010, I move that
9 the ABC Board hold a closed meeting for the
10 purpose of seeking legal advice from our counsel
11 on case #16-CMP- 00006, Casa Lebrato, per section
12 405 (b) (4) of the Open Meetings Ammendment Act of
13 2010 and deliberating upon case #16-CMP-00006,
14 Casa Lebrato, for the reasons cited in Section
15 405 (b) (13) section of the Open Meetings
16 Amendment Act of 2010. Is there a second?

17 MR. ALBERTI: Second.

18 CHAIRPERSON ANDERSON: Mr. Alberti has
19 seconded the motion. I'll now take a roll call
20 vote.

21 CHAIRPERSON ANDERSON: Mr. Silverstein has
22 seconded the motion. I will now take a roll call

1 vote on the motion before us now that it has been
2 seconded: Ms. Miller?

3 MS. MILLER: I agree.

4 CHAIRPERSON ANDERSON: Mr. Alberti?

5 MR. ALBERTI: I agree.

6 CHAIRPERSON ANDERSON: Mr. Silverstein?

7 MR. SILVERSTEIN: I agree.

8 CHAIRPERSON ANDERSON: Mr. Anderson? I
9 agree. As it appears that the motion has passed,
10 I hereby give notice that the ABC Board will hold
11 a closed meeting in the ABC Board Conference Room
12 today pursuant to the Open Meetings Amendment Act
13 of 2010 and issue an order within 90 days. What
14 that means sir is that we will issue, based on
15 the testimony that was issued today, we will
16 issue a decision in 90 days and let you know
17 whether or not, what the fine range is if we find
18 you guilty or if we find you innocent. And if we
19 find you guilty, we'll let you know what the fine
20 range is. Okay? What I would ask that you do
21 sir, is that I heard you stated before that you
22 didn't have the time, but I would strongly

1 suggest, maybe it might be a hardship to close
2 your business for the day to come to an ABC
3 training, because what that will do, the amount
4 of money that you might lose when you close your
5 business for the day you might pay more in fines
6 if the investigator keeps on coming to your
7 establishment and sees that you're violating the
8 law and you're violating the law because you're
9 not aware of the law, so I would strongly
10 suggest to you that the next time there's
11 training, that you or your wife, one of the two
12 of you, come -- it's only for a couple of hours -
13 - to come do the training so, therefore, if an
14 investigator comes to your establishment they'll
15 give you a nice certificate to say that you're
16 complying with the law rather than give you a
17 ticket, okay?

18 MR. LEE: Yes.

19 CHAIRPERSON ANDERSON: All right, thank you,
20 sir.

21 MR. LEE: Thank you, sir.

22 (Whereupon, the above-entitled matter was
23 concluded.)